

DIVISION III  
ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

CA05-1375

May 24, 2006

ST. EDWARD MERCY MEDICAL  
CENTER & SISTERS OF MERCY  
HEALTH SYSTEMS

APPELLANT

V.

PAMELA LOCKHART

APPELLEE

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F210149]

AFFIRMED

This is a second appeal of this case. In an unpublished opinion, *Lockhart v. St. Edward Mercy Medical Center*, CA 05-106 (Aug. 31, 2005), this court reversed and remanded this case to the Workers' Compensation Commission because although the Commission had denied Pamela Lockhart's claim that she had suffered a specific-incident injury, it had made no findings regarding her alternative argument that she had suffered a gradual-onset injury. Upon remand, the Commission determined that Lockhart had indeed suffered a gradual-onset injury; that she was entitled to total-temporary-disability compensation from August 22, 2002, until December 17, 2002; and that she was entitled to an anatomical-impairment rating of eight percent. St. Edward's now appeals, arguing that the Commission's decision is not supported by substantial evidence. We affirm the Commission's decision.

The standard of review in workers' compensation cases is well-settled. We view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm the decision if it is supported by substantial

evidence. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Geo Specialty, supra*. It is the Commission's province to determine witness credibility and the weight to be given to each witness's testimony. *Johnson v. Riceland Foods*, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Any contradictions in the evidence are for the Commission to reconcile. *Arkansas Dep't of Health v. Williams*, 43 Ark. App. 169, 863 S.W.2d 583 (1993). The Commission's resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Pamela Lockhart worked for St. Edward Mercy Medical Center as a certified dietary manager. One aspect of her job entailed delivering food trays to patients' hospital rooms. Testimony from Lockhart and her supervisor indicated that the food carts weighed anywhere from 350 to 800 pounds and that the carts were difficult to maneuver. Lockhart testified that she was required to make frequent stops with the carts while delivering the meals for breakfast and lunch. She said that about three months prior to her injury, she began having to deliver more food carts during her shift; approximately three weeks before her injury, she began having problems with her back, but she was generally able to treat this pain with over-the-counter medication and only missed one day of work due to these problems. However, around 9:45 a.m. on August 21, 2002, while pulling or pushing a food cart on one of the hospital floors, Lockhart testified that she felt

“excruciating” pain down her left leg; that she could not bear any weight on her left leg; and that she was hurting across her lower back. She testified that she told her supervisor, Marty Hoyt, that she had hurt her back and needed to go to the doctor. Hoyt did not arrange for Lockhart to see a doctor.

Lockhart was able to finish her shift, although she testified that it was very difficult to get through the day. She did not seek care at St. Edward’s after her shift ended because she was concerned that if she received a shot, she could not drive herself home. She went home and tried over-the-counter pain relievers, but when she could no longer stand the pain, her husband took her to the Choctaw Nation Indian Hospital, where range-of-motion and neurological tests were performed, and an MRI of her lumbar spine was ordered from St. Edward’s.

Lockhart completed an “Employee Injury Report” and Workers’ Compensation Form N, relating that her “left leg went numb and there was excruciating pain down [her] lower back.” Although Lockhart’s workers’ compensation claim was initially denied by St. Edward’s, she subsequently saw Dr. Mark Hayes of her own accord for an orthopaedic evaluation. Dr. Hayes ordered a lumbar myelogram and post CT, which showed a herniation at L4-5; Dr. Hayes subsequently performed a lumbar laminectomy at L4-5 on October 21, 2002, and kept Lockhart off work until December 18, 2002, when he released her to work with the restriction that she not lift more than forty pounds. Lockhart was not offered work by St. Edward’s that was within her restrictions.

Lockhart testified that prior to August 2002 she had no problems with her low back. She admitted that she had a compression-fracture back injury in 1976 from being in a tornado, but the injury was at T-11, and it did not affect her ability to return to work.

Lockhart also said that she had been treated by a chiropractor for muscle spasms, but that she had not seen the chiropractor since December 2000.

Lockhart said that her low-back pain and her left-leg pain did not go away until after Dr. Hayes performed the surgery, and that the surgery relieved “most all” of the symptoms. Lockhart said that she still had leg pain, and that she had also developed a recurrence of low-back pain, for which she was seen by neurologist Dr. Allen Fielding, Dr. Hayes’s partner, in Dr. Hayes’s absence. She said that she was receiving long-term disability benefits through St. Edward’s, and that she would like to get retrained and return to the workforce.

On cross-examination, Lockhart stated that a post-operative diskogram performed upon the recommendation of Dr. Hayes indicated that she was not having any pain at the level where he performed the surgery, L4-5, but rather at the L5-S1 level. However, Lockhart said that she was hurting most of the time at a low level in her back at her beltline. She said that although Dr. Hayes told her that her left-leg symptoms had resolved as a result of the surgery, they had not totally resolved. Lockhart also denied that she had ever been told that she had degenerative-disk disease.

During questioning by St. Edward’s attorney, Dr. Mark Hayes testified in deposition, as abstracted:

My diagnosis now is that I believe she has some discomfort, some pain coming from her L5-S1 disc. The L4-5 disc is asymptomatic. The L5-S2 disc level, this is just called a level, this is symptomatic. I don’t know if that is due to degenerative changes. I am not going to attribute a cause to it. It’s just she’s got some symptoms at that level.

. . . .

I think that her problems with back pain to a large extent was coming from L5-S1 disc in retrospect. In retrospect, which had been chronic and long-

term. There is probably some degree of back pain coming from the L4-5 but I believe that she did have a disc herniation, subtle as it was, that caused leg symptoms which became intolerable which I operated on and it got better at L4-5. She's still left with back pain. That's a separate issue. She shows subtle disc herniation at L4-5, in my opinion. There are some degenerative changes, some thickening that we talked about earlier that was discovered by me during the procedure. I feel like I successfully treated the

problem of the leg symptoms primarily, yes, some degree of the back pain. She's had a history of chronic pain attributable to the L5-S1 disc primarily and that is still ongoing. I can't relate that to a specific incident.

Under questioning by Lockhart's attorney, Dr. Hayes stated, as abstracted in pertinent part:

Assuming Mrs. Lockhart had an intermittent history of low back pain going down into the left leg and it had gotten significantly worse on August 21, 2002, that would in no way change my opinions that I have stated in my March 5, 2003 narrative report. It tends to confirm that. In my medical opinion there was a herniated disc present and I observed that at the time of surgery. In my medical opinion based upon a reasonable degree of medical certainty the work activity or this injury was the major cause of her need for medical care and treatment including the surgery. I am discussing the 8-21-02 injury.

In *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 234, 48 S.W.3d 540, 542 (2001)

(citations omitted), this court set out the requirements for a gradual-onset injury:

When a claimant requests benefits for an injury characterized by gradual onset, Arkansas Code Annotated section 11-9-102(4)(A)(ii) (Supp. 1999) controls, defining "compensable injury" as follows:

(4)(A)(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

. . . .

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence[.]

A claimant seeking benefits for a gradual-onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external

physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. Furthermore, objective medical evidence is necessary to establish the existence and extent of an injury, but it is not essential to establish the causal relationship between the injury and the job.

Upon remand, the Commission, upon finding that Lockhart had suffered a gradual-onset injury, stated:

The claimant credibly testified that she gradually began suffering from muscle spasms and numbness in her leg while pushing heavy carts for the respondents in August 2002. The claimant testified that she suffered from excruciating pain while performing these duties on August 21, 2002. The Employee Injury Report and WCC Form N both corroborated the claimant's testimony. The claimant ultimately underwent a lumbar laminectomy at L4 in October 2002.

The claimant's treating surgeon, Dr. Hayes, stated in March 2003 that he had observed a small disc herniation at L4-5 on the left. Dr. Hayes stated, "It is my opinion within a reasonable degree of medical certainty that the findings on the myelogram and CT scan are consistent with Ms. Lockhart's description of her injury and duties at St. Edward's Hospital. It is also my opinion within a reasonable degree of medical certainty that Ms. Lockhart did sustain an injury as a result of her work-related activities." Dr. Lockhart's deposition testimony corroborated his earlier medical opinions.

The Full Commission finds that the claimant sustained a back injury which was not caused by a specific incident and was not identifiable by time and place of occurrence. The Claimant's back injury caused physical harm to the claimant's body and arose out of and in the course of her employment with the respondents. The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control, namely, the work-related L4-5 disc herniation reported by Dr. Hayes. The claimant also proved that the compensable back injury was the major cause of her disability and need for treatment.

St. Edward's contends that the Commission's decision is not supported by substantial evidence, arguing that Dr. Hayes's deposition testimony "severely undermines" the opinions expressed in his report and that his testimony should not be credited with any weight. St. Edward's also asserts that Dr. Hayes's opinions relating Lockhart's herniation at L4-5 to her work activities were based upon the history provided

by Lockhart, which St. Edward's contends is different than the history contained in her medical records.

In support of its contention of "over reliance" on patient history, St. Edward's cites *Williams v. Brown's Sheet Metal*, 81 Ark. App. 459, 105 S.W.3d 382 (2003), where this court held that the Commission is not bound by a physician's opinion that is formulated largely on facts related by a claimant "where the claimant's own testimony is less than determinative." However, *Williams* is distinguishable from the present case -- in *Williams*, the Commission denied the claimant benefits, and in the present case the Commission awarded the claimant benefits, expressly finding that Lockhart provided credible testimony. Furthermore, the credibility of medical opinions is a determination for the Commission, not this court.

In the present case, Lockhart suffered a back injury that was not identifiable by a specific incident. Both Lockhart's testimony, which the Commission deemed to be credible, and Dr. Hayes's deposition testimony established that the injury arose out of and in the course of Lockhart's employment. Dr. Hayes established that the injury caused internal physical harm to Lockhart, in the form of a herniated disc at L4-5, and Dr. Hayes opined, and the Commission obviously believed, that such injury was a major cause of Lockhart's disability and need for treatment.

We hold that substantial evidence supports the Commission's decision.

Affirmed.

BIRD and CRABTREE, JJ., agree.